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{
REPORT
No. 677

PROVIDING CERTAIN BASIC AUTHORITY FOR USIA

DECEMBER 4, 1963.—Ordered to be printed

Mr. FULBRIGHT, from the Committee on Foreign Relations, submitted the following

R E P O R T

[To accompany S. 2213]

The Committee on Foreign Relations, having had under consideration S. 2213, a bill to provide certain basic authority for the U.S. Information Agency, reports the bill favorably to the Senate, with an amendment, and recommends that it pass as amended.

1. MAIN PURPOSE OF THE BILL

The primary objective of S. 2213 is to supply basic legislative authority to support certain items which have been included in past acts providing appropriations for the U.S. Information Agency (USIA). In the absence of such authority, any item concerned may be stricken from an appropriation bill if a point of order is raised against it.

2. COMMITTEE ACTION

Draft legislation received in the Senate on September 20, 1963, from Mr. Edward R. Murrow, Director of the USIA, was introduced as S. 2213 by Senator Fulbright, by request, on October 7.

At a hearing the Committee on Foreign Relations held on October 29, Mr. Ben Posner, Deputy Assistant Director, Office of Administration, accompanied by Mr. Eugene J. Skora, Office of the General Counsel, USIA, appeared in support of S. 2213. Mr. David Marsh, representing the Association of Casualty & Surety Companies, presented testimony on section 3 of the bill. On November 26, in executive session, the committee ordered S. 2213 favorably reported to the Senate, with an amendment.

3. PROVISIONS OF THE BILL

Except for section 3, which is discussed below, the provisions of S. 2213 are explained in the appendix accompanying this report. Several provisions which deal with an expansion of authority USIA has had in the past are also discussed below.

Section 3 of the bill, as proposed by the executive branch, related to indemnification of owners and operators of international radio stations and facilities. The authority requested by USIA in this regard was virtually identical to language which has regularly been carried in acts appropriating funds for the Agency since 1953. No claims have been made or paid pursuant to the indemnification provision carried in prior USIA appropriation acts. At the present time, the only contract in effect with an indemnification clause is one the Agency has with the National Broadcasting Co. relative to the operation and maintenance of a radio facility in Bound Brook, N.J.

In connection with its examination of the proposed section 3, the committee decided it would be best to make the indemnification authority substantially similar to basic authority now possessed by the military departments (10 U.S.C. 2354). Section 3(a) specifies that any contract for the use of international radio stations and facilities may provide, with the approval of the Director of USIA, that the United States will indemnify the owners and operators of the stations and facilities against certain loss or damage arising out of the direct performance of the contract and to the extent the loss or damage is not covered by insurance or otherwise. The indemnification coverage extends to (1) claims (including reasonable expenses of litigation or settlement) by third persons for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous, and (2) loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous. Indemnification pursuant to section 3 is subject, in the final analysis, to such funds as may be thereafter appropriated for the purpose. Under section 3(b) a contract providing for indemnification must also provide for (1) notice to the United States of any claim or suit against the contractor for the death, bodily injury, or loss of or damage to property, and (2) control of or assistance in the defense by the United States, at its election, of that suit or claim. And before any indemnification payment may be made, the USIA Director must certify that the amount is just and reasonable (sec. 3(c)).

Pursuant to section 3(d), each party to an indemnification agreement must maintain financial protection of such type and in such amounts as the USIA Director may require to cover liability to third persons and loss of or damage to property. One witness appearing before the committee expressed concern that the Agency's present indemnification authority might result in having a competitive effect upon private insurance carriers. The committee believes that USIA will exercise diligence and care to avoid such a result.

In the following respects, S. 2213 would expand the Agency's existing authority:

For the purpose of promoting and maintaining friendly relations with peoples abroad, the Director of USIA would be authorized by section 1(e) of the bill to pay meritorious claims against the Agency arising overseas. Such claims may not exceed \$15,000, and the authority granted would parallel that contained in the Military Claims

Act (10 U.S.C. 2734). Past appropriation acts have accorded USIA claims authority equal to that of the administrative settlement authority of the domestic Tort Claims Act which USIA has felt has hampered the Agency by imposing upon it a virtually impossible requirement of claims settlement "in accordance with the laws of the place where the act or omission occurred."

Section 1(k) of the bill would enable USIA to rent or lease, for a maximum period of 10 years, offices, buildings, grounds, and living quarters for persons engaged in Agency activities abroad. Present law limits rentals for leases to 5 years, and the 10-year term would place USIA on the same footing as the Department of State and the Agency for International Development, thus making it possible for the three agencies to standardize their rental and leasing practices.

In addition, section 1(k) would have the effect of permitting the Agency to rent or lease living quarters not only for its own officers and employees overseas—as it currently can do—but also, when circumstances require, for binational center grantees and contractor personnel engaged in USIA activities abroad who encounter difficulties in securing housing. In certain countries, particularly in Africa, housing is available only on payment of several years' rent in advance, and in many cases only on extensive renovation of quarters. Government housing provided for an individual pursuant to section 1(k) will be in lieu of the quarters allowance he would otherwise receive.

Section 4 of the bill would authorize the appointment or assignment to the Agency of Foreign Service Reserve officers without regard to the 10-year statutory limitation on tenure contained in section 522 of the Foreign Service Act of 1946, as amended. USIA has no authority to make appointments to the Foreign Service Officer Corps which is the career officer category for the Foreign Service. It does have, however, authority to make Foreign Service Reserve appointments, and appropriations acts have regularly included a yearly extension of these appointments in order that the Agency might retain senior Reserve officers who have served more than 10 years. The authority in section 4 would eliminate the possibility of a point of order being raised against these annual extensions.

4. CONCLUSION

The annual cost to the U.S. Government of this legislation is expected to approximate \$5,000 a year resulting from the settlement of meritorious claims.

The committee believes S. 2213, by providing a firm base of substantive authority for various USIA activities, will remove uncertainties and facilitate the Agency's performance of its administrative and other tasks. Most provisions in the bill deal with matters for which money has been appropriated in the past, and the new authorities granted seem reasonable. Therefore, the committee recommends Senate passage of S. 2213.

APPENDIX

HEARING BEFORE THE COMMITTEE ON FOREIGN RELATIONS, U.S. SENATE, ON
S. 2213, A BILL TO PROVIDE CERTAIN BASIC AUTHORITY FOR THE U.S.
INFORMATION AGENCY, OCTOBER 29, 1963

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room S-116, U.S. Capitol Building, Senator J. W. Fulbright (chairman) presiding.

Present: Senators Fulbright, Sparkman, Humphrey, Lausche, Symington, and Aiken.

(After considering other matters, the committee proceeded to consideration of S. 2213.)

The CHAIRMAN. The next item is S. 2213, a bill to provide certain basic authority for the U.S. Information Agency.

The CHAIRMAN. Our first witness is Mr. Ben Posner, Deputy Assistant Director, Office of Administration, USIA, who is accompanied by Mr. Eugene J. Skora, Office of the General Counsel, USIA. Mr. Posner, do you have a statement you wish to make?

STATEMENT OF BEN POSNER, DEPUTY ASSISTANT DIRECTOR, OFFICE OF ADMINISTRATION, USIA; ACCOMPANIED BY EUGENE J. SKORA, OFFICE OF THE GENERAL COUNSEL, USIA

Mr. POSNER. Yes, sir; we have a prepared statement which has, I believe, been submitted to the committee. It is 10 pages, Mr. Chairman. Perhaps I could abstract the highlights and ask that the statement be included.

The CHAIRMAN. All right.

Mr. POSNER. Mr. Chairman and members of the Senate Foreign Relations Committee, my name is Ben Posner and I am the Deputy Assistant Director for Administration of the U.S. Information Agency.

I am here today, at the kind invitation of the committee, to testify in support of S. 2213, to provide certain basic authority for the U.S. Information Agency. Accompanying me is Eugene Skora, an Assistant General Counsel with our Agency.

PURPOSE OF S. 2213

The purpose of the bill is to provide basic legislative authority for certain housekeeping activities necessary for the day-to-day operations of the Agency. Except for sections 1(e), 1(k), and 4, which have been modified somewhat, the items contained in the bill have been carried regularly in the Agency's annual appropriation acts and do not constitute any new authority.

These items are subject, however, to a point of order under the rules of both the Senate and the House which provide, in effect, that no appropriation for a purpose not previously authorized by law shall be included in any appropriation bill.

The purpose of S. 2213, therefore, is to overcome this legislative deficiency by providing continuing basic legislative authority for the activities specified in the bill.

Similar remedial action has already been taken by the Congress with respect to the Department of State in the enactment of Public Law 885 in the 84th Congress.

CATEGORIES OF BILL'S PROVISIONS

The provisions of the bill fall into two general categories: (1) those which authorize the Agency to perform certain functions which it is performing at the present time, by authority contained in appropriations act rather than in basic legislation, and (2) another category, those which authorize the Agency to make

expenditures for certain purposes which, according to rulings of the Comptroller General, must be specifically included in basic legislation or appropriations acts. I should point out, however, that those categories authorized by appropriations acts are subject to the point of order to which I previously referred.

I refer to three sections which are somewhat different from the authorities included in the Agency's annual appropriations acts. They are essentially the same authority, but broadened somewhat.

AUTHORITY TO SETTLE MERITORIOUS CLAIMS

Section 1(e) would authorize the settlement of meritorious claims abroad up to \$15,000 whereas our current appropriation act authorizes the settlement of tort claims abroad up to \$2,500.

It is an integral part of the Agency's function to promote and maintain friendly relations with people abroad. It is essential in such regard to be able to make prompt settlement of overseas claims when the damage or injury results from the conduct of activities of the Agency.

Our present authority—in appropriation acts—has been limited to "payment of tort claims, in the manner authorized in the first paragraph of section 2672, as amended, of title 28 of the United States Code when such claims arise in foreign countries."

It is not anticipated that there would be many instances in which settlements in excess of \$2,500 would be made. Since the Agency was established in 1953, there have been only three or four claims which were in excess of that amount. Thus, the Agency believes that authority to settle claims up to \$15,000 would be adequate for all but the most exceptional claims. In addition, the authority to settle claims on their merits without regard to difficult questions of legal liability under various systems of foreign law will help promote good will and friendly relations for the United States.

Senator MORSE. May I interrupt with one question before you move on to the next section. These tort claims involve what—automobile accidents, slipping in headquarters, and typical court actions?

Mr. POSNER. Yes, sir; precisely.

AUTHORITY TO LEASE PROPERTY ABROAD

Section 1(k) as proposed in the bill is identical with that authority contained in our appropriation except that it would authorize Agency lease of property abroad for offices and living quarters for a maximum of 10 years instead of the 5-year ceiling included in the current Agency appropriation act. The proposed change would place the Agency on the same footing as the Department of State and AID, which have leasing authority for periods up to 10 years, and would, we believe, permit us to enter into more advantageous arrangements in the countries where we operate abroad.

Since the three foreign affairs agencies lease property abroad on a centralized basis under uniform regulations, it will facilitate such joint procurement if the Agency's authority conforms to that of its sister agencies. Also, it is anticipated that rentals for the longer term will result in economies to the Government in some instances.

AUTHORITY TO PROVIDE LIVING QUARTERS FOR PERSONS ENGAGED IN USIA ACTIVITIES ABROAD

Section 1(k) of the bill differs from the Agency's current appropriation act in another respect in that it would authorize living quarters abroad to be provided to persons engaged in Agency activities who are not employees. Binational center grantees and employees of Agency contractors, particularly in Africa, have found it difficult or impossible financially to lease living quarters. The Agency believes it would be in the Government's interest in appropriate cases to provide living quarters to such persons in lieu of quarters allowances.

AUTHORITY RELATING TO FOREIGN SERVICE RESERVE APPOINTMENTS

Section 4 of the bill also differs somewhat from authority contained in the Agency's current appropriation act.

At present, the Agency is authorized to appoint persons to the Foreign Service Reserve and the Foreign Service Staff Corps—this was given to us in our reorganization plan and the Executive order which accompanied it at the time the

Agency was established—it is not authorized to make appointments to the Foreign Service Officer Corps which is the career officer category of the Foreign Service system. Pursuant to section 522 of the Foreign Service Act of 1946, as amended (22 U.S.C. 922), Foreign Service Reserve appointments are limited to two 5-year periods or a maximum tenure of 10 years. Accordingly, the Agency appropriation acts have regularly included language authorizing the extension for an additional year of appointments which expire in the course of the given fiscal year.

Under the proposed section, the Director of the Agency is authorized to appoint or reappoint Foreign Service Reserve officers without regard to the 10-year statutory limitation on tenure. This will protect the careers of 23 senior officers who have served more than 10 years and the growing number of such officers as they reach the statutory ceiling. As of now, the raising of a point of order would place all these careers in jeopardy.

The remaining sections of the bill merely restate the existing Agency authorities as contained in appropriation acts, substantially without change.

I will review each of the remaining sections and explain very briefly why the authorities are necessary.

AUTHORITY RELATING TO EMPLOYMENT OF ALIENS ABROAD TO PERFORM SERVICES IN THE UNITED STATES

Section 1(a) authorizes the Agency to employ aliens abroad for service as a narrator or translator. For example, it may not be possible to find in the United States announcers who have the proper accent or who are familiar with the up-to-date idiom of certain exotic languages or dialects. In such instances, the Agency can recruit and employ qualified narrators and translators directly from abroad.

The language of this subsection authorizes the employment of aliens abroad for narration and translation services in the United States only "when suitably qualified U.S. citizens are not available." Naturally the Agency attempts to fill all domestic positions with U.S. citizens. When qualified citizens are not available, we attempt to recruit qualified aliens resident in the United States. It is only when neither qualified U.S. citizens nor aliens can be found in the United States that the Agency employs aliens abroad for services in the United States.

The employment of aliens within the United States for narration and translation of colloquial speech in a foreign language when suitably qualified U.S. citizens are not available is authorized in section 801(5) of the U.S. Information and Educational Exchange Act of 1948, when such employment is provided for by appropriation act.

Agency appropriation acts have regularly provided for employment of aliens within the United States as well as from abroad for the above purposes, even though the basic law referred to above authorized such employment only within the United States. Accordingly, the proposed section would provide a substantive legal basis for employment of aliens abroad.

Section 1(b) is complementary to subsection 1(a) and simply authorizes the Agency to pay travel expenses of alien narrators and translators employed abroad and their dependents to and from the United States and their country of residence.

AUTHORITY RELATING TO ENTERTAINMENT EXPENDITURES

Section 1(c) authorizes the expenditure of a limited amount of appropriated funds for entertainment in the United States.

Agency appropriation acts have regularly included authority similar to that proposed in subsection 1(c) for entertainment within the United States in specific amounts. Under the proposed language, expenditures for entertainment are authorized only when, and to the extent, specifically provided in an appropriation act.

A statutory basis for expenditure of appropriated funds for entertainment is necessitated by a Comptroller General ruling that appropriated funds are not available for purposes of entertainment within the United States in the absence of a specific statutory authorization therefor (26 Comp. Gen. 283).

AUTHORITY RELATING TO INSURANCE COVERAGE

Section 1(d) authorizes the Agency to secure liability insurance on official vehicles operated abroad. It is common practice for Embassy vehicles, both State Department and USIA, to carry liability insurance. In many foreign countries such insurance coverage is mandatory under local law.

The Comptroller General has consistently ruled that funds of a Government agency may not be expended, in the absence of statutory authority, to purchase insurance to cover the Government's possible tort liability (19 Comp. Gen. 798).

AUTHORITY RELATING TO ADVANCES OF FUNDS

Section 1(f) permits advance of funds to grantees, contractors, and others engaged in activities which further the basic purposes of the Agency program. Specific authority for advance payments is required under the provisions of section 3648 of the Revised Statutes (31 U.S.C. 529) which reads in part:

"No advance of public money shall be made in any case unless authorized by the appropriation concerned or other law * * *."

AUTHORITY TO CONTRACT WITH ALIENS ABROAD

Section 1(g) authorizes the Agency to contract with aliens abroad. The nature of the Agency's program involving such varied activities as exhibits, lectures, periodical distribution, etc., requires the use of local contractual services.

Specific statutory authority is necessary for employment of personnel services by contract as a result of numerous decisions of the Comptroller General (18 Comp. Gen. 529; 19 Comp. Gen. 594) to the effect that all employment of personal services must be by appointment in accordance with the civil service and classification laws in the absence of statutory authority for employment by contract.

OTHER AUTHORITIES

Section 1(h) authorizes the expenditure of Agency funds for ice and drinking water. The Comptroller General has ruled (3 Comp. Gen. 828) that in the absence of specific statutory authority, appropriated funds cannot be used for such purchases.

Section 1(i) authorizes the Agency to pay excise taxes on negotiable instruments abroad. The Comptroller General has held (19 Comp. Gen. 625) that in the absence of specific statutory authority therefor appropriated funds are not available for payment of excise taxes on checks drawn on U.S. Government deposits in foreign banks.

Section 1(j) authorizes the Agency to transport to their former homes the remains of persons, not Government employees, who die while participating in Agency activities.

While statutory authority exists for the transportation of remains of employees from abroad to the United States, no similar authority is available for persons engaged in Agency activities abroad who are not U.S. Government employees.

Section 1 (l) and (m) authorizes the Agency to expend appropriated funds for the maintenance and repair of rented premises and for fuel, water, and utilities for Government owned or leased premises.

Section 1(n) authorizes Agency personnel attending international conferences abroad to be paid travel expenses and per diem at the rates established by the Secretary of State for the particular conference.

Section 2 authorizes the Agency to charge the appropriation for the fiscal year in which travel begins for all expenses of such travel even though not concluded until sometime in the succeeding fiscal year.

AUTHORITY TO INDEMNIFY OWNERS AND OPERATORS OF RADIO STATIONS AND FACILITIES

Section 3 authorizes the Agency to agree, in contracts for the use of international radio stations and facilities, to indemnify owners and operators of such radio stations and facilities against claims arising out of broadcasting operations. The words "short wave," which have appeared in Agency appropriation acts, since we have instances where this may result in the operation of medium-wave facilities, we ask that the reference to "short wave" radio stations be eliminated and that we simply refer to international radio stations and facilities.

STANDARD ENABLING PROVISION

Section 5 is the standard enabling provision authorizing appropriations to carry out the purposes of the bill and authorizing appropriations without fiscal year limitation when so provided in the appropriation.

PURPOSE OF S. 2213

In conclusion, I would like to state that except for the three sections which I discussed above, this bill does not provide additional authorities for the U.S. Information Agency. Rather, it is in effect a recodification in substantive legislation of administrative authorities which have regularly been made available in annual appropriation acts.

The CHAIRMAN. Senator Sparkman.

Senator SPARKMAN. No questions.

The CHAIRMAN. Senator Morse.

Senator MORSE. No questions.

The CHAIRMAN. Senator Lausche.

AUTHORITY TO PROVIDE LIVING QUARTERS FOR PERSONS ENGAGED IN USIA
ACTIVITIES ABROAD

Senator LAUSCHE. Are you making in this bill a change in the law dealing with allowances for quarters?

Mr. POSNER. No, sir.

Senator LAUSCHE. I thought I saw something in your statement to that effect. "Section 1(k) of the bill differs from the Agency's current appropriation act," you say, "in another respect in that it would authorize living quarters abroad to be provided to persons engaged in Agency's activities who are not employees."

What type of employees do you have that fall into that class?

Mr. POSNER. We have, sir, binational center grantees, who are individuals that we send to binational centers in Latin America, who are paid on a grant basis, and therefore do not have the same benefits as regular employees of the Agency.

We also have persons abroad who teach English under contract, particularly in the newer countries of Africa, and there have been instances where the complete lack of housing in these countries has been of considerable harm to the Agency in carrying out this English teaching program. We are asking here that we be permitted to lease housing for these individuals who are not technically employees of the Agency.

Senator LAUSCHE. Do you provide living quarters for all of your people abroad?

Mr. POSNER. No, sir. Our policy is essentially the same as that of the Department of State. We authorize quarters allowances to the individual where those quarters are available. In certain parts of the world where there are no quarters available, the Government may lease housing.

Senator LAUSCHE. That is all.

The CHAIRMAN. Senator Symington?

USIA'S RELATIONSHIP TO THE DEPARTMENT OF STATE

Senator SYMINGTON. What is the relationship of the USIA with the State Department?

Mr. POSNER. We are a separate agency, Senator, operating under close policy guidance of the Department of State.

Senator SYMINGTON. What does that mean, "close policy guidance"?

Mr. POSNER. It means, as I understand it, sir, that everything we originate with respect to the foreign policy of the United States is in accordance with guidances given us by the Department of State.

Senator SYMINGTON. How is that done?

Mr. POSNER. This is done through daily consultation with the Department of State in which we sit with representatives of the Department. They give us in effect the current policy issues and advise us with respect to the official U.S. position on each issue.

Senator SYMINGTON. How do you do that? Do you have a meeting every morning?

Mr. POSNER. Yes, sir; immediately following the meeting with the State Department people, our representatives return to the Agency. The representatives of our various media then meet with the people who have attended the guidance sessions.

Senator SYMINGTON. Who goes to these daily meetings from your Agency?

Mr. POSNER. The representatives of our Office of Policy. I do not know the name of the specific individuals at this moment, sir.

Senator SYMINGTON. Is it one representative?

Mr. POSNER. I believe that there are more than one.

Senator SYMINGTON. The title is Assistant Director for Administration, is it not?

Mr. POSNER. Yes, sir.

Senator SYMINGTON. Presumably you would know your organizational setup. I don't mean to be critical.

Mr. POSNER. Yes, sir. My impression is that we send more than one person to these meetings.

Senator SYMINGTON. Do you know their names?

Mr. POSNER. I do not have them immediately available, sir.

Senator SYMINGTON. Do you know how many changes there have been in that position? Has it had the same people since it started?

Mr. POSNER. There have been changes in the individuals, sir.

Senator SYMINGTON. And who do they talk with in the State Department?

Mr. POSNER. They talk essentially to the public affairs officers of the Department.

Senator SYMINGTON. And those people are the same people in the State Department, or do they change?

Mr. POSNER. They also change, sir.

Senator SYMINGTON. And they meet every morning?

Mr. POSNER. They meet every morning, yes, sir.

Senator SYMINGTON. Do they keep minutes of the meetings?

Mr. POSNER. I believe there are no formal minutes.

Senator SYMINGTON. Actually what you do is operate under the directions of the State Department, but it is all informal; is that correct?

Mr. POSNER. I believe the requirement that we operate under the policy guidance of the State Department is included in the act which establishes the Agency, sir.

Senator SYMINGTON. And to whom does the Director of the USIA report?

Mr. POSNER. The Director of the U.S. Information Agency reports to the President.

Senator SYMINGTON. Why doesn't he report to the Secretary of State?

Mr. POSNER. That was a result of USIA's becoming an independent agency in 1953.

Senator SYMINGTON. I am not criticizing. I am just asking. You wouldn't have to go through all this and have all this costly extra bureaucracy if it was just a department in the Department of State. All these things you can't do that you list here in detail the Department of State can do you would thereupon do as the Department of State; and you would not have to have all these extra people.

If you operate under the direction of the Department of State, it is hard for me to see how they can control you if they don't control you.

But if you were in the Department of State, you would not have to have all these people. That occurs to me from the standpoint of trying to save the Government a little money.

Mr. POSNER. Sir, actually we have made no change in the way we were operating overseas at the time that the Agency was created. The representatives of the Department of State abroad still do nearly all of our administrative activities, and we believe that there have been no extra costs as a result of this change in organization.

Senator SYMINGTON. If they do them abroad, why can't they do them at home?

Mr. POSNER. In some instances, such as with respect to communications where it is clear that there are economies from a joint operation, they do, sir.

Senator SYMINGTON. But why can't they do them all if they do them abroad?

Why can't you just function as an arm of the State Department and let them handle your housekeeping? That is my question basically.

Mr. POSNER. This was considered at some length at the time that the separation of the U.S. Information Agency from the Department was settled by the Congress, and at that time it was our position that there were advantages to having the information function handled by a separate agency.

Senator SYMINGTON. As you know, we get criticized for constantly adding people to the Federal payroll.

I notice you are asking authority for drinking water. Can't you get drinking water from the State Department? Do you have to have a special law for that?

Mr. POSNER. As a practical matter, sir, the same person who would make the arrangements for the Department of State abroad would make the arrangements for our employees abroad, so that it is just a matter of our funds being available for that purpose.

Senator SYMINGTON. As I understand it, then, the way you interpret the law is that abroad the State Department can supply ice and drinking water but over

here you have to have separate legislation to do that for your own people; is that correct?

Mr. POSNER. No, sir. I think that we are dealing here only with the purchase of ice and drinking water abroad.

Senator SYMINGTON. I refer you to the bottom of page 8. Don't misunderstand me. I am all for you getting the water.

Senator MORSE. And the ice, too?

Mr. POSNER. The explanation is incomplete, sir. Section 1(h) says, "to provide ice and drinking water abroad." It does not give us the authority in this country.

Senator SYMINGTON. I did not hear that last part. I am sorry.

Mr. POSNER. The provision, section 1(h) in the law, states that we seek authority to provide ice and drinking water abroad. It does not give us the authority to purchase it domestically.

Senator SYMINGTON. How would you handle that if you don't get this passed?

Mr. POSNER. At the moment, sir, the authority is contained in our appropriation act. If we did not have the authority in our appropriation bill to pay for ice and drinking water abroad, we would be prohibited from making expenditures for that purpose.

AUTHORITY TO INDEMNIFY OWNERS AND OPERATORS OF RADIO STATIONS AND FACILITIES

Senator SYMINGTON. My final question is this. You say that section 3 authorizes the Agency to agree to a contract for the use of international radio stations to indemnify owners and operators against claims arising out of broadcasting operations.

If you only function under the direction, the policy direction of the State Department, why wouldn't they be the ones to indemnify the owners, if there was any indemnification needed? Wouldn't they have to set it up with lawyers and so forth to handle it?

Mr. POSNER. I think, sir, it is a matter of which funds are used. These are our appropriated funds. Again, as a practical matter in any case which might arise abroad, we would use the existing staffs of the Department of State abroad.

USIA EMPLOYEES IN ATTENDANCE AT FOREIGN SERVICE INSTITUTE

Senator SYMINGTON. How many members of the USIA have attended and are attending a foreign service academy?

Mr. POSNER. I don't have the precise number, sir. I would have to guess. At the Foreign Service Institute all of our new junior officers undergo a period of training. Also, our people who would take language training would be there.

Senator SYMINGTON. You say you would guess?

Mr. POSNER. I would guess, sir, that at any moment we would have at least 200 people attending the Foreign Service Institute.

Senator SYMINGTON. Would you file a statement at this point for the committee as to how many in the past 5 years have gone to the Foreign Service Institute, and how many are there now and what is the policy?

Mr. POSNER. Yes, sir; I will be very happy to.

(The statement referred to follows:)

USIA employees attendance at Foreign Service Institute

<i>Fiscal year:</i>	<i>Number of participants</i>	<i>Fiscal year—con.</i>	<i>Number of participants</i>
1959.....	325	1962.....	679
1960.....	319	1963.....	631
1961.....	309	Present (as of Oct. 28).....	248

The Foreign Service Institute is the primary training facility for Agency employees and is used almost exclusively for foreign language instruction, regional studies, training pertaining to Communist strategy and tactics, and junior officer basic training. Only training which is peculiarly applicable to USIA operations or which may not be available at the Institute is provided directly by the Agency. The Agency does maintain language self-training facilities at a convenient location for the use of its employees to supplement facilities of FSI.

Senator SYMINGTON. Thank you, Mr. Chairman.

The CHAIRMAN. Anything further, Mr. Posner?

Mr. POSNER. Nothing, sir.

COST OF PROPOSED LEGISLATION

Senator LAUSCHE. I just want to ask one question. Are there any new moneys involved in this bill?

Mr. POSNER. Sir, we estimate that one provision, the provision which would give us a bit broader authority to meet meritorious claims could result in additional cost of \$5,000. Other than that, there would be no extra costs involved in this bill.

Senator LAUSCHE. In substance what you are trying to do is to get continuing authorization so that you will not be in constant difficulties when it is sought to place in the appropriations bill an authorization.

Mr. POSNER. Yes, sir. We feel that these items should not be included in the appropriations bill. They should be in basic legislation.

Senator LAUSCHE. That is, it will possibly cost \$5,000 as far as one aspect of it is concerned. Otherwise, it deals merely with procedure.

Mr. POSNER. Precisely, Senator.

Senator LAUSCHE. All right.

The CHAIRMAN. Anything else? Mr. David Marsh, Association of Casualty & Surety Companies, wishes to be heard.

Mr. Marsh.

STATEMENT OF DAVID MARSH, MANAGER, WASHINGTON OFFICE,
ASSOCIATION OF CASUALTY & SURETY COMPANIES

Mr. MARSH. Mr. Chairman and gentlemen, it is a privilege to be here. I am David Marsh, manager of the Washington office of the Association of Casualty & Surety Companies.

Senator SYMINGTON. What?

LETTER TO THE CHAIRMAN

Mr. MARSH. The Association of Casualty & Surety Companies, sir. I believe you have before you, sir, a letter dated October 29, 1963, addressed to you as chairman, sir, which forms the basis for a brief statement. If I may summarize that portion of the letter that contains our comments on S. 2213 and respectfully request that the letter be submitted for the record.

The CHAIRMAN. We will include the letter in the record.
(The letter referred to follows:)

ASSOCIATION OF CASUALTY & SURETY COMPANIES,
Washington, D.C., October 29, 1963.

HON. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR SENATOR FULBRIGHT: This will reply to Mr. St. Claire's letter of October 26, 1963, regarding hearings on S. 2213, introduced by yourself (by request) on October 7, 1963.

The Association of Casualty & Surety Companies is a nonprofit public service organization having a membership of 128 capital stock insurance companies, all of which do business throughout the United States and many of which provide casualty and surety coverages abroad. Our member companies do business exclusively through the services of independent insurance agents.

Briefly, we are primarily concerned with the impact that section 3 of S. 2213 may have on the privately owned capital stock insurance companies that are members of this association.

As you know, the subject of indemnification by the Federal Government of its contractors has been under study for some time, both by the Congress and by other interested groups, universities, associations, and Federal agencies.

As presently written, we believe that section 3 of S. 2213 needs clarification in several respects. First, it is uncertain whether domestically operated "international radio stations and facilities" are within the purview of section 3. Second, no limit of liability for such "loss or damage on account of injury to persons or property" is specified in the section (we recognize that this is primarily a problem for the Congress and the USIA). Third, we are uncertain as to the types of coverage which may be provided under that section through the avenue of Federal indemnity and, therefore, the competitive effect that the section may have upon the private insurance carriers which are members of this association.

To sum up, we are simply requesting that we be permitted to compete in those instances in which our member companies are providing insurance coverage at home or abroad at a reasonable cost, on reasonable terms and to the satisfaction of their customers' needs. Therefore, we urge that the committee give consideration to the points mentioned above in the course of its deliberations on S. 2213.

We stand ready to meet and consult with whomsoever the committee deems appropriate on this matter.

Respectfully submitted.

DAVID M. MARSH,
Manager, Washington Office.

CONCERN WITH IMPACT OF INDEMNIFICATION AUTHORITY IN SECTION 3 OF S. 2213

Mr. MARSH. The Association of Casualty & Surety Companies is a nonprofit public service organization having a membership of 128 capital stock insurance companies, all of which do business throughout the United States and many of which provide casualty and surety coverages abroad. Domestically our member companies do business exclusively through the services, saleswise, of independent insurance agents.

Briefly, we are primarily concerned with the impact that section 3 of S. 2213 may have on the privately owned capital stock insurance companies that are members of this association.

As you know, the subject of indemnification by the Federal Government of its contractors has been under study for some time, both by the Congress and by other interested groups, universities, associations, and Federal agencies.

NEED FOR CLARIFICATION OF SECTION 3

As presently written, we believe that section 3 of S. 2213 needs clarification in several respects. First, it is uncertain whether domestically operated "international radio stations and facilities" are within the purview of section 3. Second, no limit of liability for such "loss or damage on account of injury to persons or property" is specified in the section (we recognize that this is primarily a problem for the Congress in consultation with the USIA). Third, we are uncertain as to the types of coverage which may be provided under section 3 through the avenue of Federal indemnity and, therefore, the competitive effect that the section may have upon the private insurance carriers which are members of this association.

To sum up, we are simply requesting that we be permitted to compete in those instances in which our member companies are providing insurance coverage at home or abroad at a reasonable cost, on reasonable terms, and to the satisfaction of their customers' insurance needs. In this instance, of course I might add that the customers would be Government contractors to the USIA. Therefore, we urge that the committee give consideration to the points mentioned above in the course of its deliberations on S. 2213.

We stand ready to meet and consult with whomsoever the committee deems appropriate on this matter.

In this regard I might also thank the staff of the committee and the staff of the USIA for expending every effort to iron out this problem.

INSURANCE PURCHASES OF USIA CONTRACTORS

The CHAIRMAN. I am not clear what the problem is. Do you presently insure these companies?

Mr. MARSH. We are not certain, sir. This is our problem.

The CHAIRMAN. Under the existing situation, without this law, are you writing insurance on these contracts?

Mr. MARSH. We offer a multiplicity of things that could fall within loss or damage on account of injury to persons or properties.

The CHAIRMAN. For USIA?

Mr. MARSH. Whether we do this specifically with regard to what this bill is intended to do, I am not absolutely certain, sir. This may be no problem at all.

Senator LAUSCHE. You did not answer the question. Are you actually now selling policies of indemnity to reimburse for damages suffered through the misdeeds of this Agency or by its contractors? Are you now selling insurance?

Mr. MARSH. We were unable to gather that information, sir. We are selling liability insurance, of course, to Government contractors. We are selling workman's compensation insurance.

Senator LAUSCHE. Are you actually selling it to contractors who do business with the USIA?

Mr. MARSH. I would have to defer. I am sorry.

Senator LAUSCHE. You don't know?

Mr. MARSH. I do not know. I would be glad to submit that for the record.

The CHAIRMAN. May we ask Mr. Posner. Do you know anything about this?

Mr. POSNER. I do not know whether any of the insurance companies with which Mr. Marsh is associated cover our contractors, sir.

Senator LAUSCHE. Do you buy insurance coverage?

Mr. POSNER. Our contractors do.

Senator LAUSCHE. Or do you have your own reserves out of which you make the payment?

Mr. POSNER. We do not ourselves buy insurance, sir. The contractors with whom we do business—and it happens that by October 30 the number will be reduced to one, which is the National Broadcasting Co. at our plant in Bound Brook, N.J.—do buy liability insurance, and we reimburse them as a part of our contract with them. I don't know whether they buy insurance from any of the companies involved here.

The CHAIRMAN. I am not clear, Mr. Marsh, what you want the committee to do.

Mr. MARSH. Sir, I can only say that our companies are right sensitive when you talk Federal indemnification of its contractors. This is different from the Government doing it alone.

QUESTION OF INDEMNIFICATION AUTHORITY OF OTHER GOVERNMENT AGENCIES

Senator SYMINGTON. Mr. Chairman, could I ask a question. Do you have any relationship with the State Department?

Mr. MARSH. Yes, sir.

Senator SYMINGTON. Is this matter satisfactory in the State Department to you now?

Mr. MARSH. I am not sure whether the State Department has this specific authority. What I was referring to is that we write bonds on—

Senator SYMINGTON. The question I am asking, Are you asking on this contract for the extension of something that is already satisfactory in the State Department or are you asking for something that is new and different as to your relationship with the State Department?

Mr. MARSH. As the Senator will recall, when NASA came to the Space Committee of the U.S. Senate, Senator Clinton Anderson, I believe, Senator Hickenlooper and others—

Senator SYMINGTON. Wait a minute. I may not recall it because I may not have been there, and if I was I may have forgotten it. Let's get back to the question. My question is, Do you have the same position already in the State Department that you would like to have under S. 2213?

Mr. MARSH. No, sir.

Senator SYMINGTON. Or are you asking for a special position for the USIA as against what you have with the State Department?

Mr. MARSH. We are asking for no special position, Senator. We are simply asking to compete.

Senator SYMINGTON. Then do you have this position in the State Department that you are asking for with USIA?

Mr. MARSH. No, sir; not to my knowledge.

Senator SYMINGTON. It is very hard for me to get to work now because they are building so many new buildings, and I have to detour three or four times, and I can see how this is all very beneficial to a group of people, but I am not sure why you would want—I am not talking about you but people in traditional Government employment—I don't see why you would want to use this bill and get something out of the USIA that you don't have with the other agencies involved with the State Department.

Mr. MARSH. As the Senator knows, these coverages are reimbursable costs to Department of Defense contractors and NASA contractors.

Senator SYMINGTON. I am not sure. We are asking for information, but my point is I don't see why you pick this particularly relatively inconsequential bill to get a position for a group of insurance companies, if it isn't the same position you have with the established agencies. That is my point.

Mr. MARSH. I think what we are asking for is the same thing, sir. We are not attempting to get anything.

Senator SYMINGTON. If we give it to you on the USIA, you will probably ask for it in the Defense Department and the State Department; is that correct?

Mr. MARSH. No, sir.

Senator SYMINGTON. Then why should this Agency be singled out to give it to you?

Mr. MARSH. Because section 3 of the bill, taken on its face, allows USIA to preempt insurance companies, I believe.

Senator SYMINGTON. Is this different from——

The CHAIRMAN. It is already doing it. All that does is raise the limit, doesn't it?

Senator SYMINGTON. I give up.

The CHAIRMAN. Any other questions?

USIA CONTRACTS FOR THE USE OF INTERNATIONAL RADIO STATIONS AND FACILITIES

Senator LAUSCHE. I would like to get the situation clarified. It is completely confusing. What type of claims are embodied in this indemnity authority that you ask for in the bill, Mr. Posner?

Mr. POSNER. I will ask Mr. Skora to speak to that, sir.

Mr. SKORA. Perhaps I can answer. We are not asking for any new authority. This is the same language that has been included in our appropriation acts for several years.

Senator LAUSCHE. I understand that; but do you pay the claims for which you become obligated out of your own funds or do you buy insurance policies?

Mr. SKORA. Perhaps I can explain it this way, Senator. We have a cost-plus-fixed-fee contract with NBC which operates a radio facility for us.

Among the reimbursable items are included premiums for insurance for public liability coverage. NBC will take out its own insurance and be reimbursed for those premiums by the Government, by USIA.

In addition to this, however, the contract includes an indemnification clause which will indemnify NBC for claims over and above those which are covered by their insurance protection.

Senator LAUSCHE. Then, under existing law, the insurance companies who want to sell policies are able to sell them to your contractor.

Mr. SKORA. Yes, sir.

Senator LAUSCHE. And that right will continue.

Mr. SKORA. Yes, sir.

ASSOCIATION'S CONCERN WITH SECTION 3

Senator LAUSCHE. Do you say that it will not continue or that the language isn't adequately clear? What are you asking, Mr. Marsh?

Mr. MARSH. Senator, I can only say that on the face of it section 3 appears to preempt this continuing type of coverage for Government contractors, which every other agency has, the Department of Defense, the Atomic Energy Commission, and so forth.

Senator LAUSCHE. What do you want us to do in this bill? Will you tell me in words?

Mr. MARSH. Allow us to compete and not be preempted by the Federal Government to furnish insurance which the contracting officer of the USIA deems and the State insurance department deems not too high in the premium, and not too low.

Senator LAUSCHE. That is all understandable. Now what is your answer to that statement of his, Mr. Skora?

Mr. SKORA. It is my understanding, Senator Lausche, that our contracts presently in fact do provide for the contractor to take out insurance with the premiums reimbursable by the Agency.

Senator LAUSCHE. Do you understand that to be the fact? And that is what you want, isn't it?

Mr. MARSH. Yes, sir. We are not asking for compulsory insurance. As a matter of fact, we fight that rather vigorously.

Senator LAUSCHE. We can take a look and see if this bars it. I think they ought to have the right to sell, but I don't see anything here that would bar the contractor from buying insurance.

Senator SPARKMAN. It seems to me that a record could be made of that in the report on the bill or even a colloquy on the floor of the Senate when that is being considered, which would clear up that point. I would suggest that that course be followed.

The CHAIRMAN. Any other questions? Thank you very much, Mr. Marsh.

Mr. MARSH. Thank you, sir.

PROVIDING CERTAIN BASIC AUTHORITY

Senator LAUSCHIE. Send for the record a letter telling what arrangements you made with these contractors. That is, do you reimburse them for their premium of insurance, and do you also indemnify them for expenditures in excess of the coverage. Give the facts as they are, will you please?

Mr. POSNER. Yes, sir.

(The following statement was subsequently submitted for the record by USIA:)

U.S. INFORMATION AGENCY UTILIZATION IN CONTRACTS OF INDEMNIFICATION
AUTHORITY CONTAINED IN SECTION 3 OF S. 2213

The indemnification authority requested by the Agency in section 3 of S. 2213 is identical (except for the deletion of the word "shortwave") with authority previously contained in Agency appropriation acts since the Agency was established in 1953.

State Department appropriation acts also included such authority prior to 1953, when the information function was conducted by the Department.

At the present time, the Agency has only two contracts for the operation and maintenance of radio facilities, one with the Crosley Broadcasting Corp. and the second with the National Broadcasting Co., both of which include an indemnification clause.

Under these cost-plus-a-fixed-fee contracts the Agency compensates the contractor for such public liability insurance as it deems necessary for the contractor to have. Normally, the coverage includes automobile liability insurance and general comprehensive liability coverage under the contractor's policy covering all his operations. Accordingly, the indemnification by the Government to the contractor excludes claims covered by such insurance and workmen's compensation claims.

In effect, the indemnification would have application to situations not normally the subject of liability insurance and to claims in excess of the limits of the applicable insurance.

The Agency has no record of any claims made or paid pursuant to the indemnification clause.

Effective November 1, 1963, the Crosley contract will expire and the only radio facility which will be operated by a contractor will be the Bound Brook, N.J., facility operated by the National Broadcasting Co.

(The committee proceeded to the consideration of other business.)

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